

TITLE II—COAL

Subtitle A—Coal Energy Research, Development and Demonstration

SEC. 201. COAL AND RELATED TECHNOLOGIES PROGRAMS.

(a) DEFINITIONS.—For the purposes of this section.—

(1) The term “cost and performance goals” means the cost and performance goals established under subsection b of this subsection.

(2) The term “Secretary” means the Secretary of Energy.

(b) COST AND PERFORMANCE GOALS.—The Secretary shall perform an assessment that identifies cost and performance goals of technologies that would permit the continued cost-competitive use of coal for electricity generation, as chemical feedstocks, and as transportation fuel. In establishing the cost and performance goals, the Secretary shall—

(1) consider activities and studies undertaken to date by industry in cooperation with the Department of Energy in support of such assessment;

(2) consult with interested entities, including coal producers, industries using coal, organizations to promote coal and advanced coal technologies, environmental organizations and organizations representing workers;

(3) issue a set of draft cost and performance goals for public comment, no later than 120 days after the date of enactment of this Act; and

(4) submit to Congress the final cost and performance goals, no later than 180 days after the date of enactment of this Act, after taking into consideration any public comments received.

(c) STUDY.—

(1) No later than 1 year after the date of enactment of this Act, and once every 2 years thereafter through 2016, the Secretary, in cooperation with other appropriate federal agencies, shall conduct a study to—

(A) identify technologies that, by themselves or in combination with other technologies, may be capable of achieving the cost and performance goals;

(B) assess the costs that would be incurred by, and the period of time that would be required for, the development and demonstration of technologies that, by themselves or in combination with other technologies, contribute to the achievement of the cost and performance goals;

(C) develop recommendations for technology development programs, which the Department of Energy could carry out in cooperation with industry, to develop and demonstrate technologies that, by themselves or in combination with other technologies, achieve the cost and performance goals, and

(D) develop recommendations for additional authorities required to achieve the cost and performance goals, and review and recommend changes, if any, to those cost and performance goals if the Secretary determines that such changes are necessary as a result of ongoing research, development and demonstration of technologies.

(2) In carrying out this section, the Secretary shall give due weight to the expert advice of representatives of the entities described in section 201(b)(2).

SEC 202. PRODUCTION AND GENERATION OF COAL-BASED POWER.

(a) IN GENERAL.—The Secretary shall carry out a technology research, development and demonstration program to facilitate production and generation of coal-based power through methods and equipment under this Title; the Federal Nonnuclear Energy Research and

Development Act of 1974 (42 U.S.C. 5901 et seq.); the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); and title XVI of the Energy Policy Act of 1992 (42 U.S.C. 13381 et seq.).

(b) CONDITIONS—The program described in subsection (a) shall be designed to achieve the cost and performance goals required by section 201(b).

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary \$200,000,000 for fiscal year 2004, \$210,000,000 for fiscal year 2005, and \$220,500,000 for fiscal year 2006, to remain available until expended, for coal and related technologies research and development programs, which shall include—

- (1) innovations for existing plants;
- (2) integrated gasification combined cycle;
- (3) advanced combustion systems;
- (4) turbines for synthesis gas derived from coal;
- (5) carbon capture and sequestration research and development;
- (6) coal-derived transportation fuels and chemicals;
- (7) solid fuels and feedstocks; and
- (8) advanced coal-related research.

(b)(1) LIMIT ON USE OF FUNDS.—Prior to the use of funds authorized by this section, the Secretary shall transmit to the Congress a report describing the proposed use of funds and containing a plan that includes—

(A) a detailed description of how proposals will be solicited and evaluated, including a list of all activities expected to be undertaken;

(B) a detailed list of technical milestones for each coal and related technology that will be pursued; and

(C) a description of how the programs authorized in this section will be carried out so as to complement and not duplicate activities authorized under the Clean Coal Power Initiative authorized under subtitle B.

(2) Thirty days shall elapse from receipt of the report after which the Secretary may then use the authorization of appropriations provided by this section.

Subtitle B—Clean Coal Power Initiative

SEC. 211. AUTHORIZATION OF APPROPRIATIONS.

CLEAN COAL POWER INITIATIVE.— There are authorized to be appropriated to the Secretary to carry out the activities authorized by this subtitle \$200,000,000 for each of the fiscal years 2003 through 2011, to remain available until expended.

SEC. 212. PROJECT CRITERIA.

(a) IN GENERAL.—The Secretary shall not provide funding under this title for any project that does not advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in operation or have been demonstrated as of the date of the enactment of this Act.

(b) TECHNICAL CRITERIA FOR GASIFICATION.—In allocating the funds made available under section 211(a), the Secretary shall ensure that funds are used for coal-based gasification technologies, coal based projects that include the separation and capture of carbon dioxide, or coal based projects that include gasification combined cycle, gasification fuel cells, gasification coproduction, or hybrid gasification/combustion. The Secretary shall set technical milestones specifying emissions levels that coal gasification projects must be designed to and reasonably expected to achieve. The milestones shall get more restrictive through the life of the program.

1 The milestones shall be designed to achieve by 2020 coal gasification projects able to—

- 2 (1) remove 99 percent of sulfur dioxide;
- 3 (2) emit no more than .05 lbs of NO_x per million BTU;
- 4 (3) achieve substantial reductions in mercury emissions; and
- 5 (4) achieve a thermal efficiency of —
 - 6 (A) 60 percent for coal of more than 9,000 Btu;
 - 7 (B) 59 percent for coal of 7,000 to 9,000 Btu; and
 - 8 (C) 57 percent for coal of less than 7,000 Btu.

9 (c) TECHNICAL CRITERIA FOR OTHER PROJECTS.— For projects not described in
10 subsection (b), the Secretary shall set technical milestones specifying emissions levels that the
11 projects must be designed to and reasonably expected to achieve. The milestones shall get more
12 restrictive through the life of the program. The milestones shall be designed to achieve by 2010
13 projects able to—

- 14 (1) remove 97 percent of sulfur dioxide;
- 15 (2) emit no more than .08 lbs of NO_x per million BTU;
- 16 (3) achieve substantial reductions in mercury emissions; and
- 17 (4) achieve a thermal efficiency of —
 - 18 (A) 45 percent for coal of more than 9,000 Btu;
 - 19 (B) 44 percent for coal of 7,000 to 9,000 Btu; and
 - 20 (C) 42 percent for coal of less than 7,000 Btu.

21 (d) EXISTING UNITS.—In the case of projects at existing units, in lieu of the thermal
22 efficiency requirements set forth in paragraphs (b)(4) and (c)(4), the projects shall be designed to
23 achieve an overall thermal design efficiency improvement compared to the efficiency of the unit
24 as operated, of not less than—

- 25 (A) 7 percent for coal of more than 9,000 Btu;
- 26 (B) 6 percent for coal of 7,000 to 9,000 Btu; or
- 27 (C) 4 percent for coal of less than 7,000 Btu.

28 (e) CONSULTATION.—Before setting the technical milestones under subsections (b) and
29 (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency
30 and interested entities, including coal producers, industries using coal, organizations to promote
31 coal or advanced coal technologies, environmental organizations, and organizations representing
32 workers.

33 (f) FINANCIAL CRITERIA.—The Secretary shall not provide a funding award under this
34 title unless the recipient has documented to the satisfaction of the Secretary that—

- 35 (1) the award recipient is financially viable without the receipt of additional
36 Federal funding;
- 37 (2) the recipient will provide sufficient information to the Secretary for the
38 Secretary to ensure that the award funds are spent efficiently and effectively; and
- 39 (3) a market exists for the technology being demonstrated or applied, as
40 evidenced by statements of interest in writing from potential purchasers of the
41 technology.

42 (g) FINANCIAL ASSISTANCE.—The Secretary shall provide financial assistance to projects
43 that meet the requirements of this section and are likely to—

- 44 (1) achieve overall cost reductions in the utilization of coal to generate useful
45 forms of energy;
- 46 (2) improve the competitiveness of coal among various forms of energy; and

(3) demonstrate methods and equipment that are applicable to 25 percent of the electricity generating facilities that use coal as the primary feedstock as of the date of the enactment of this Act.

(h) FEDERAL SHARE.—The Federal share of the cost of a coal or related technology project funded by the Secretary shall not exceed 50 percent, to be repaid over a reasonable, agreed upon, period of time.

(i) APPLICABILITY.—No technology, or level of emission reduction, shall be treated as adequately demonstrated for purposes of section 111 of the Clean Air Act, achievable for purposes of section 169 of that Act, or achievable in practice for purposes of section 171 of that Act solely by reason of the use of such technology, or the achievement of such emission reduction, by one or more facilities receiving assistance under this title.

SEC. 213. REPORT.

(a) Not later than 1 year after the date of the enactment of this Act, and once every 2 years thereafter through 2011, the Secretary, in consultation with other appropriate Federal agencies, shall transmit to the Speaker of the House of Representatives and to the President of the Senate, a report describing—

(1) the technical milestones set forth in section 212 and how those milestones ensure progress toward meeting the requirements of subsections (b) and (c) of section 212; and

(2) the status of projects funded under this title.

SEC. 214. CLEAN COAL CENTERS OF EXCELLENCE.

As part of the program authorized in section 211, the Secretary shall award competitive, merit-based grants to universities for the establishment of Centers of Excellence for Energy Systems of the Future. The Secretary shall provide grants to universities that can show the greatest potential for advancing new clean coal technologies.

Subtitle C—Federal Coal Leases

SEC. 221. REPEAL OF THE 160-ACRE LIMITATION FOR COAL LEASES.

Section 3 of the Mineral Leasing Act (30 U.S.C. 203) is amended in the first sentence by striking “such lease,” and all that follows through the end of the sentence and inserting “such lease.”.

SEC. 222. MINING PLANS.

Section 2(d)(2) of the Mineral Leasing Act (30 U.S.C. 202a(2)) is amended—

(1) by inserting “(A)” after “(2)”; and

(2) by adding at the end the following:

“(B) The Secretary may establish a period of more than forty years if the Secretary determines that the longer period will ensure the maximum economic recovery of a coal deposit, or the longer period is in the interest of the orderly, efficient, or economic development of a coal resource.”.

SEC. 223. PAYMENT OF ADVANCE ROYALTIES UNDER COAL LEASES.

(a) IN GENERAL.—Section 7(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 207(b)) is amended to read as follows:

“(b)(1) Each lease shall be subjected to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee.

“(2)(A) The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance

1 royalties.

2 “(B) Such advance royalties shall be computed based on the average price for coal sold in
3 the spot market from the same region during the last month of each applicable continued
4 operation year.

5 “(C) The aggregate number of years during the initial and any extended term of any lease
6 for which advance royalties may be accepted in lieu of the condition of continued operation shall
7 not exceed 20.

8 “(3) The amount of any production royalty paid for any year shall be reduced (but not
9 below zero) by the amount of any advance royalties paid under such lease to the extent that such
10 advance royalties have not been used to reduce production royalties for a prior year.

11 “(4) This subsection shall be applicable to any lease or logical mining unit in existence
12 on the date of the enactment of this Act or issued or approved after such date.

13 “(5) Nothing in this subsection shall be construed to affect the requirement contained in
14 the second sentence of subsection (a) relating to commencement of production at the end of 10
15 years.”.

16 (b) AUTHORITY TO WAIVE, SUSPEND, OR REDUCE ADVANCE ROYALTIES.—Section 39 of
17 the Mineral Leasing Act (30 U.S.C. 209) is amended by striking the last sentence.

18 **SEC. 224. ELIMINATION OF DEADLINE FOR SUBMISSION OF COAL LEASE**
19 **OPERATION AND RECLAMATION PLAN.**

20 Section 7(c) of the Mineral Leasing Act (30 U.S.C. 207(c)) is amended by striking “and
21 not later than three years after a lease is issued,”.

22 **SEC. 225. AMENDMENTS RELATING TO FINANCIAL ASSURANCES WITH**
23 **RESPECT TO BONUS BIDS.**

24 (a) PROHIBITION ON REQUIRING SURETY BONDS.— Section 2(a) of the Mineral Leasing
25 Act (30 U.S.C. 201(a)) is amended by adding at the end the following:

26 “(4) The Secretary shall not require a surety bond or any other financial assurance to
27 guarantee payment of deferred bonus bid installments with respect to any coal lease issued based
28 upon a cash bonus bid.

29 “(5) Notwithstanding any other provision of law, if the lessee under a coal lease fails to
30 pay any installment of a deferred cash bonus bid within 10 days after the Secretary provides
31 written notice that payment of such installment is past due—

32 “(A) such lease shall automatically terminate;

33 “(B) any deferred bonus payments that have not been paid to the United States
34 with respect to such lease shall no longer be owed to the United States; and

35 “(C) any bonus payments already made to the United States with respect to such
36 lease shall not be returned to the lessee or credited in any future lease sale.”.

37 (b) CONFORMING AMENDMENT.—Section 2(a)(1) of the Mineral Leasing Act (30 U.S.C.
38 201(a)(1)) is amended by striking “Upon default or cancellation of any coal lease for which
39 bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the
40 United States.”.

41 **SEC. 226. INVENTORY REQUIREMENT.**

42 (a) DEFINITIONS.—For purposes of this section—

43 (1) the term “compliant coal” means coal that contains not less than 1.0 and not
44 more than 1.2 pounds of sulfur dioxide per million Btu; and

45 (2) the term “supercompliant coal” means coal that contains less than 1.0 pounds
46 of sulfur dioxide per million Btu.

1 (b) REVIEW OF ASSESSMENTS.—The Secretary of the Interior, in consultation with the
2 Secretary of Agriculture and the Secretary of Energy, shall review coal assessments and other
3 available data to identify—

- 4 (1) public lands with coal resources;
5 (2) the extent and nature of any restrictions or impediments to the development of
6 coal resources on public lands identified under paragraph (1); and
7 (3) with respect to areas of such lands for which sufficient data exists, resources
8 of compliant coal and supercompliant coal.

9 (c) COMPLETION AND UPDATING OF THE INVENTORY.—The Secretary shall complete the
10 inventory under subsection (a) not later than 2 years after the date of the enactment of this Act,
11 and update the inventory as the availability of data and developments in technology warrant.

12 (d) REPORT.—The Secretary shall submit to the Speaker of the House of Representatives
13 and the President of the Senate and make publicly available, by not later than 2 years after the
14 enactment of this Act, a report containing the inventory under this section and each update of
15 such inventory.

16 **SEC. 227. APPLICATION OF AMENDMENTS.**

17 The amendments made by this Act apply with respect to any coal lease issued before, on,
18 or after the date of the enactment of this Act.

19 **Subtitle D—Powder River Basin Shared Mineral Estates**

20 **SEC. 231. SHORT TITLE.**

21 This Act may be cited as the “Powder River Basin Resource Development Act”.

22 **SEC. 232. DEFINITIONS.**

23 In this Act:

24 (1) The term “coalbed methane” has the meaning given that term in section
25 1339(p)(2) of the Energy Policy Act of 1992 (42 U.S.C. 13368(p)(2)).

26 (2) The term “common area” means an area in the Basin in which all or a portion
27 of a Federal coal lease (including any area of State or private coal within a logical mining
28 unit with the Federal coal lease) overlaps all or a portion of an oil and gas lease or right
29 to develop.

30 (3) The terms “Federal coal lease” and “Federal oil and gas lease” mean a lease in
31 the Basin issued pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the
32 Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.).

33 (4) The term “Federal coal lessee” means the holder of a Federal coal lease.

34 (5) The term “non-Federal oil and gas lease or right to develop” means a lease for
35 or right to develop oil and gas in the Basin provided by a State or private owner of the
36 resources.

37 (6) The term “oil and gas developer” means the holder of an oil and gas lease or
38 right to develop.

39 (7) The term “oil and gas lease or right to develop” means a Federal oil and gas
40 lease in the Basin or non-Federal oil and gas lease or right to develop in the Basin.

41 (8) The term “owners of any interest in the oil and gas lease or right to develop”
42 means persons who own the working interest, lease interest, operating interest, mineral
43 interest, royalty interest, or any other interest in the oil and gas lease or right to develop,
44 and any other persons who might receive compensation for unavoidable fixed expenses
45 under an order concerning the oil and gas lease or right to develop issued pursuant to
46 section 239(d).

(9) The term “Powder River Basin” or “Basin” means the area in the State of Wyoming designated as the “Dispute Resolution Area” on maps entitled “Powder River Basin, Dispute Resolution Area”, dated September 10, 2001, and on file in the Wyoming State Office of the Bureau of Land Management.

(10) The term “Secretary” means the Secretary of the Interior.

SEC. 233. PARTIES ENCOURAGED TO ENTER INTO WRITTEN AGREEMENT.

In any common area, the Federal coal lessee and oil and gas developer, subject to applicable Federal and State laws, regulations, and lease terms, are encouraged to enter into a written agreement that details operations and assigns or assesses costs or compensation for the concurrent or sequential development of those resources.

SEC. 234. NEGOTIATIONS CONCERNING DEVELOPMENT PRIORITY FOR CERTAIN OPERATIONS IN THE BASIN.

(a) OBLIGATION TO PROVIDE WRITTEN NOTICE OF CONFLICT.—Whenever a Federal coal lessee or an oil and gas developer determines that its Federal coal lease (or a logical mining unit including the Federal coal lease) or its oil and gas lease or right to develop is located in a common area, and, pursuant to a mining plan approved by, or submitted for the approval of, the Secretary, mining operations or facilities in support of mining for coal on the Federal coal lease or the logical mining unit will be located within the common area, the Federal coal lessee or the oil and gas developer shall deliver written notice of the determination to the other party and the Secretary no later than 240 days before the date on which the mining operations or construction of the mine support facilities is projected by the approved or proposed mining plan to commence in the common area.

(b) OBLIGATION TO NEGOTIATE.—Promptly after providing the notice referred to in subsection (a), the party that provided the notice shall seek to negotiate a written agreement with the other party that resolves any conflict between the development of gas or oil and development of coal in the common area.

SEC. 235. PETITION FOR RELIEF.

(a) SUBMISSION OF PETITION.—If notice is submitted timely pursuant to section 234(a) and the Federal coal lessee and the oil and gas developer seek to engage in negotiations, but fail to reach agreement, pursuant to section 234(b), the Federal coal lessee or the oil and gas developer may file a petition for relief in the United States district court for the district of Wyoming and serve the other party on any date which is not less than 180 days before the date on which the mining operations or construction of the mine support facilities is projected by the approved or proposed mining plan to commence in the common area. The Secretary, by regulation, shall establish the requirements for the information to be submitted with the petition.

(b) JOINDER OF PARTIES.—All owners of any interest in the oil and gas lease or right to develop and in the Federal coal lease or logical mining unit, including the Secretary, identified by the petitioner, the Secretary, or themselves shall be joined in the proceedings established pursuant to this Act. Failure to timely join a party shall not extend deadlines imposed by this Act, but the court shall take all necessary steps to insure that no party is prejudiced by late joinder.

(c) PARTIES’ RESPONSE TO PETITION.—The non-Federal respondent or respondents may provide to the Secretary a response to the petition within 30 days after the date of filing of the petition for relief pursuant to subsection (a). The Secretary may require the petitioner and the non-Federal respondent or respondents to submit such documents or provide such testimony, or both, as the Secretary deems appropriate within 60 days of such date of filing.

1 **SEC. 236. SECRETARY’S RESPONSE TO PETITION.**

2 (a) IN GENERAL.—Within 90 days after the date of filing of the petition for relief
3 pursuant to section 235(a), the Secretary shall take the actions required by this section.

4 (b) INITIAL DETERMINATIONS.—The Secretary shall determine, with petitioner having the
5 burden of proof—

6 (1) whether a common area exists; and

7 (2) whether the approved or proposed mining plan provides for mining operations
8 to occur, or mine support facilities to be constructed, in any portion of the common area.

9 (c) LEASE SUSPENSION.—If the Secretary makes affirmative determinations pursuant to
10 paragraphs (1) and (2) of subsection (b), the Secretary shall suspend all or any portion of any
11 Federal oil and gas lease, including the application of such a lease to any geographical area or
12 zone or reservoir, to accommodate development of the coal resource in the common area during
13 the period beginning on a date no later than the commencement date referred to in section 235(a)
14 and ending on the effective date of an order issued pursuant to section 239(d).

15 (d) SECRETARIAL REPORT.— The Secretary shall—

16 (1) not delegate the making of determinations pursuant to this section;

17 (2) report the determinations made pursuant to this section and any suspension
18 made pursuant to subsection (c), including the administrative record therefor, to the court
19 in which the petition for relief is filed pursuant to section 235(a); and

20 (3) provide the petitioner and respondents with copies of the report and record.

21 **SEC. 237. COURT’S INITIAL RESPONSE TO PETITION.**

22 (a) RECEIPT OF SECRETARIAL REPORT.—The court in which the petition is filed pursuant
23 to section 235(a) shall have exclusive jurisdiction to receive and review the report of the
24 Secretary required by section 236(d), and the determinations made and any action taken by the
25 Secretary pursuant to section 236.

26 (b) PARTIES’ OBJECTIONS TO REPORT.—

27 (1) The petitioner and respondents shall have 30 days after the date on which the
28 report of the Secretary is filed with the court pursuant to section 236(d) in which to file
29 with the court any objection to any determination of the Secretary required by section
30 236.

31 (2) If any objection is filed pursuant to paragraph (1), the court shall, within 60
32 days after receipt of the report of the Secretary pursuant to section 236(d), make the
33 determination that is the subject of the objection on the basis of the administrative record
34 filed with the report and in accordance with the applicable requirements of section 236.

35 (3) If no objection is filed pursuant to paragraph (1), the determinations of the
36 Secretary required by section 236 shall be final and approved by the court in the order
37 issued pursuant to subsection (c) or subsection (d).

38 (c) COURT ORDER.—Within 90 days after the date of receipt of the report of the Secretary
39 pursuant to section 236(d), the court, except as provided in subsection (d), shall issue an order, to
40 expire on the effective date of an order issued pursuant to section 239(d), that—

41 (1) suspends all or any part of any non-Federal oil and gas lease or right to
42 develop, including the application of such a lease or right to any geographical area or
43 reservoir, in the common area in accordance with the determination of the Secretary
44 pursuant to section 236 or in accordance with the determination of the court pursuant to
45 subsection (b)(2) of this section; and

46 (2) if required by a determination of the court pursuant to subsection (b)(2),

1 terminates a Federal oil and gas lease suspension imposed by the Secretary pursuant to
2 section 236, or imposes a suspension of a Federal oil and gas lease, or both, in
3 accordance with the determination; and

4 (3) fixes the date upon which the Federal coal lessee may commence mining
5 operations or construction of mine support facilities in the common area, which may be
6 no later than the commencement date referred to in section 235(a).

7 (d) TERMINATION OF PROCEEDING.—If the Secretary makes a negative determination
8 pursuant to section 236(b), or if the court makes a negative determination pursuant to an
9 objection under subsection (b)(2) of this section to affirmative determinations of the Secretary
10 under section 236(b), the court shall issue an order terminating the proceeding under this Act.

11 **SEC. 238. EXPERTS' APPOINTMENT AND REPORT; COURT REVIEW AND**
12 **HEARING.**

13 (a) APPOINTMENT PROCEDURE.—Within 30 days after the date of issuance of an order
14 pursuant to section 237(c), to assist the court in making the determinations pursuant to section
15 239—

16 (1) the Federal coal lessee and the oil and gas developer shall each appoint a
17 person who is an expert in appraising the value of, and right to develop, gas or oil; and

18 (2)(A) persons appointed under paragraph (1) shall agree upon and appoint a third
19 person with such expertise; or

20 (B) if no agreement is reached on a third person by the end of such period, the
21 court shall appoint such person.

22 (b) COMPENSATION.—The Federal coal lessee and the oil and gas developer shall each be
23 responsible for payment of one-half of the compensation for and costs of the experts in the
24 performance of their duties under this Act.

25 (c) INFORMATION AND DATA.—

26 (1) The Federal coal lessee, the oil and gas developer, and the Secretary—

27 (A) shall each submit to the experts, within 30 days after the date of
28 completion of their appointment pursuant to subsection (a), all information and
29 data in the possession of such party that is pertinent to the determinations to be
30 made pursuant to section 239; and

31 (B) shall each submit to the experts thereafter any additional pertinent
32 information and data in the possession of such party that the experts request, in
33 writing, from such party.

34 (2) Except as provided in paragraph (3), the court shall ensure that any
35 information and data submitted to the experts pursuant to paragraph (1) shall have the
36 protection against disclosure that is applicable to them by law and the Federal rules of
37 civil procedure and evidence.

38 (3) All information and data submitted to the experts pursuant to paragraph (1)
39 shall be available for review by all parties unless otherwise ordered by the court.

40 (d) SUBMISSION OF BRIEFS AND HEARING.—

41 (1) Within 45 days after the date of completion of appointment of the experts
42 pursuant to subsection (a), all parties may submit to the court briefs concerning the
43 determinations to be made pursuant to section 239.

44 (2) Within 60 days after the date of completion of appointment of the experts
45 pursuant to subsection (a), the experts may, or if requested by the petitioner or a
46 respondent shall, receive testimony from all parties concerning the determinations to be

made pursuant to section 239.

(e) EXPERTS' REPORT.—Within 120 days after the date of completion of appointment of the experts pursuant to subsection (a), the experts shall submit to the court a written report providing in detail their recommendations on the determinations to be made pursuant to section 239.

(f) REVIEW OF EXPERTS' REPORT.—The court shall make the determinations required by section 239 after reviewing the report of the experts submitted pursuant to subsection (e) and after holding a hearing in which the parties to the proceeding shall have the opportunity to examine the experts and provide to the court evidence or arguments to support or contravene the recommendations of the report.

SEC. 239. COURT'S FINAL RESPONSE TO PETITION: VALUATION CONCERNING ECONOMICALLY RECOVERABLE OIL OR GAS RESOURCES LOST OR DELAYED, SUSPENSION OR TERMINATION, AND PAYMENT ORDER.

(a) IN GENERAL.—Within 210 days after the date of issuance of an order pursuant to section 237(c), the court shall take the actions required by this section.

(b) SUSPENSION OR TERMINATION DETERMINATION.—

(1) The court shall determine that, as a result of the order or any action of the Secretary, all or any part of the oil and gas lease or right to develop, or the application of such lease or right to any geographical area or zone or reservoir, should be—

(A) suspended during any remaining period in which mining operations or support facilities exist in the common area; or

(B) terminated.

(2) Any determination to suspend pursuant to paragraph (1) shall, wherever possible or appropriate, limit the suspension or phase the suspension to permit the optimum development of the oil or gas prior to the time at which the mining operations would reach the location within the common area that is subject to the suspension or particular phase of the suspension.

(3) Any determination to terminate pursuant to paragraph (1) shall be made only if the court finds that—

(A) the economically recoverable oil and gas resources subject to compensation pursuant to subsection (c) would be entirely lost or rendered impracticable to produce as a consequence of the mining operations in the common area; and

(B) such resources constitute all of the economically recoverable resources subject to the oil and gas lease or right to develop.

(c) COMPENSATION DETERMINATION.—

(1) If the court makes a determination to suspend pursuant to subsection (b), the court shall determine the following:

(A) The amount of any net income that will not be realized due to delay in development of economically recoverable resources of oil or gas, other than coalbed methane, from the common area, whether or not such development has commenced.

(B) The amount of any net income that will not be realized, whether or not development of coalbed methane has commenced, due to—

(i) delay in development of economically recoverable resources of coalbed methane in the common area;

1 (ii) the loss of any economically recoverable resources of coalbed
2 methane from the coal to be extracted by the mining operations in the
3 common area; and

4 (iii) the loss of any economically recoverable resources of coalbed
5 methane underlying any area that is subject to the oil and gas lease and
6 right to develop associated with the common area and that extends
7 outward from each exposed coal face of the mining operations for a
8 distance from which drainage of such resources is established to the
9 satisfaction of the court.

10 (C) Any of the following damages that will be incurred by the owners of
11 any interest in the oil and gas lease or right to develop as a consequence of the
12 suspension:

13 (i) Any unavoidable fixed expenses of shutting in production from,
14 maintenance of, and testing of an existing well.

15 (ii) Any unavoidable fixed expenses necessary to achieve
16 postsuspension recovery of all or certain economically recoverable
17 resources of oil or gas in the common area (including expenses of relaying
18 pipeline and all other expenses reasonably related to reestablishing any
19 existing oil or gas production), except that if the court determines that
20 such unavoidable fixed expenses will exceed the net income to be derived
21 from the resources, the court shall determine the amount of such net
22 income and lost royalties on oil or gas not produced.

23 (iii) Expenses associated with stranded costs of drilling equipment
24 and facilities.

25 (iv) Any lost royalties on oil or gas not produced by the oil and gas
26 developer.

27 (v) Any lost income associated with temporarily shutting in
28 production from wells outside of the common area as needed for
29 reconnection to a gathering system or pipeline to market.

30 (2) The determinations made pursuant to paragraph (1) shall not include
31 any decrease in net income or damages resulting from loss of any oil or gas
32 resources that occurred before the date of the determinations and is caused by
33 mining within or outside of the common area on the Federal coal lease or logical
34 mining unit that is the subject of the common area determination made pursuant
35 to section 236(b)(1) or section 237(b)(2).

36 (3) If the court makes a determination to terminate pursuant to subsection
37 (b), the court shall determine the amount of any net income that will not be
38 realized and any damages due to the loss of, or impracticability to produce, the
39 economically recoverable resources of oil or gas subject to the oil and gas lease or
40 right to develop in the same manner as provided in paragraph (1).

41 (4) In determining the amount of net income that will not be realized
42 pursuant to paragraph (1) or paragraph (3) and the sum of money to be awarded
43 pursuant to subsection (d), the court shall ensure to the best of its ability that the
44 Federal coal lessee is not required to pay for the same gas or oil lost, delayed in
45 development, or rendered impracticable to develop to more than one oil and gas
46 developer or the owners of any interest in more than one oil and gas lease or right

1 to develop.

2 (d) COURT ORDER.—The court shall issue an order that—

3 (1) suspends all or any part of, suspends in phases parts of, or terminates the oil
4 and gas lease or right to develop, including any applicable payment or production
5 obligations, in accordance with the determination made pursuant to subsection (b); and

6 (2) awards to the oil and gas developer and all other owners of any interest in the
7 oil and gas lease or right to develop, as their interests may appear, a sum of money from
8 the Federal coal lessee equal to the net income amount and damages determined pursuant
9 subsection (c).

10 **SEC. 240. DISBURSEMENT OF PAYMENTS TO OIL AND GAS DEVELOPERS.**

11 (a) PAYMENT ALTERNATIVES.—At the election of the oil and gas developer, the sum of
12 money awarded by the court pursuant to section 239(d)(2) shall be—

13 (1) paid in full within 60 days after the date of issuance of the order pursuant to
14 section 239(d); or

15 (2) divided into the number of tons of recoverable coal in the common area and
16 paid in per ton increments as the coal is mined, in accordance with subsections (b) and
17 (c).

18 (b) PAYMENT SCHEDULE.—The Federal coal lessee shall make the payments required by
19 subsection (a)(2) on a quarterly basis in advance based on the Federal coal lessee's estimate of
20 the number of tons of coal to be mined in the common area during the following quarter, and
21 shall add or subtract an amount to or from the advance payment for the next quarter to reflect the
22 coal mined from the common area that is actually sold or transferred.

23 (c) FINAL PAYMENT.—If the mining necessary to make full payment of the sum of money
24 awarded by the court in accordance with subsection (a)(2) does not occur within the 5-year
25 period beginning on the date of issuance of the court order pursuant to section 239(d), the unpaid
26 balance shall be paid within 60 days after the expiration of such period.

27 **SEC. 241. TERMINATION OF OIL AND GAS LEASE SUSPENSION.**

28 (a) NOTIFICATION OF COURT.—If the court issues an order to suspend all or any part of
29 the oil and gas lease or right to develop pursuant to section 239(d)—

30 (1) the Federal coal lessee shall notify the court and the oil and gas developer
31 when the portion of the common area subject to the order issued pursuant to section
32 239(d) is no longer required for mining operations or support facilities; and

33 (2) within 120 days after the date of receipt by the court of the notification
34 pursuant to paragraph (1), or within 60 days prior to the date on which the period
35 established by the court in the order issued pursuant to section 239(d) concludes, the oil
36 and gas developer may petition the court for an order that terminates the suspension and
37 fixes the date and terms on which the oil and gas developer may resume operations
38 within the portion of the common area subject to the order issued pursuant to section
39 239(d).

40 (b) COURT ORDER TO TERMINATE SUSPENSION OF LEASE OR RIGHT TO DEVELOP.—The
41 court shall issue the order sought under subsection (a)(2) within 30 days after the date of receipt
42 of the petition pursuant to subsection (a)(2).

43 (c) TERMINATION OF LEASE OR RIGHT TO DEVELOP—

44 (1) If the oil and gas developer determines that, as a consequence of the order of
45 the court issued pursuant to section 237(c) and an order to suspend all or any part of the
46 oil and gas lease or right to develop pursuant to section 239(d), the conditions described

1 in section 239(b)(3) exist, the oil and gas developer may petition the court to terminate
2 the oil and gas lease or right to develop.

3 (2) The petition referred to in paragraph (1) may be filed any time after issuance
4 of the order of the court pursuant to section 239(d), but not later than 120 days after the
5 date of receipt by the court of the notification pursuant to subsection (a)(1).

6 (3) Upon receipt of a petition pursuant to paragraph (1), the court shall make a
7 determination whether to issue an order to terminate the oil and gas lease or right to
8 develop and award an additional amount from the Federal coal lessee to the oil and gas
9 developer and all other owners of any interest in the oil and gas lease or right to develop,
10 as their interests may appear, in accordance with the procedures and deadlines
11 established in section 235(a) and sections 238 through 240.

12 **SEC. 242. SUPPLEMENTAL PETITION FOR RELIEF.**

13 (a) PETITION SUBMITTAL.—

14 (1) If, at any time after the issuance of an order pursuant to section 239(d), the
15 mining plan that is the basis of the order is altered in a manner that may warrant
16 suspension of an additional part or all of, or termination of, the oil and gas lease or right
17 to develop, or an increase in the sum of money that was awarded under the order, or both,
18 either the Federal coal lessee or the oil and gas developer may, if necessary after
19 compliance with the requirements of section 234, file a supplemental petition for relief
20 with the court to amend the order.

21 (2) The requirements of section 235(a) and sections 236 through 240 shall apply
22 to the supplemental petition submitted pursuant to paragraph (1).

23 (b) COURT ORDER.—

24 (1) Upon completion of the process required by subsection (a)(2), the court shall
25 make a determination whether to—

26 (A) suspend an additional part or all of, or terminate, the oil and gas lease
27 or right to develop as described in section 239; and

28 (B) award an additional sum of money calculated in accordance with
29 section 239.

30 (2) The court shall issue any order resulting from the determinations made
31 pursuant to paragraph (1) within 90 days after the date of filing of the supplemental
32 petition for relief.

33 **SEC. 243. APPEAL OF COURT ORDERS.**

34 (a) NON-APPEALABLE ORDERS.—Any order issued pursuant to section 237(c), section
35 237(d), section 239(d)(1), or section 242(b)(1)(A)] is final and may not be appealed.

36 (b) APPEALABLE ORDERS.—Any order issued pursuant to section 239(d)(2), section
37 241(b), section 241(c)(3), or section 242(b)(1)(B) may be appealed, but the appeal, and any
38 disposition thereof, may not affect any order referred to in subsection (a).

39 **SEC. 244. SUSPENSION TERMS.**

40 (a) FEDERAL LEASE SUSPENSION TERMS.—If all or any part of any Federal oil and gas
41 lease is suspended in whole or in part by the Secretary or the court under this Act—

42 (1) the lessee shall not be required to pay any rental for the lease for the period of
43 the suspension; and

44 (2)(A) if the lease is in the primary term, the term of the lease shall be extended
45 by the length of the period of the suspension plus one year; or

46 (B) the lease shall not terminate due to lack of production for the period of the

1 suspension plus one year.

2 (b) NON-FEDERAL LEASE SUSPENSION TERMS.—If any non-Federal oil and gas lease or
3 right to develop is suspended in whole or in part by the court under this Act, the court shall
4 establish terms for the suspension comparable to the terms set forth in subsection (a).

5 **SEC. 245. LIABILITY LIMITATION.**

6 Except as provided in a written agreement reached pursuant to section 234(b), or reached
7 on or after September 1, 1999, and before the date of enactment of this Act and approved by the
8 Bureau of Land Management, or as provided by an order of the court pursuant to this Act,
9 neither the Federal coal lessee subject to the agreement or order nor the United States shall be
10 liable to the oil and gas developer of, or any owner of an interest in, any oil and gas lease or right
11 to develop subject to the agreement or order for any decrease in or depletion of, or any
12 impairment of the ability to recover, any gas or oil subject to the oil and gas lease or right to
13 develop that may result from the development of any coal on the Federal coal leasehold or within
14 a logical mining unit that includes the Federal coal lease.

15 **SEC. 246. CREDIT AGAINST ROYALTIES.**

16 (a) IN GENERAL.—If a Federal coal lessee is required by a written agreement reached
17 pursuant to section 234(b), or reached on or after September 1, 1999, and before the date of the
18 enactment of this Act and approved by the Bureau of Land Management, or by a court order
19 issued pursuant to section 239(d), section 241(c)(3), or section 242(b)(2)(B), to pay an amount
20 for loss of economically recoverable Federal coalbed methane resources due to mining
21 operations or for suspension of all or part of, or termination of, a Federal oil and gas lease for
22 coalbed methane located within the lands designated as ‘Dispute Resolution Area’ on the maps
23 referred to in section 232(9), any amount so paid after the date of enactment of this Act shall be
24 credited against any royalties on production otherwise due from the Federal coal lessee or any
25 affiliate thereof under section 7(a) of the Mineral Leasing Act (30 U.S.C. 207(a)) for any lease of
26 Federal coal issued under that Act, or under the Mineral Leasing Act for Acquired Lands (30
27 U.S.C. 351 et seq.) for any lease of Federal coal that is subject to that Act.

28 (b) TREATMENT OF ROYALTIES TO THE STATE.—The Secretary shall pay to the State of
29 Wyoming 50 percent of the amount of any credit against royalties provided under subsection
30 (a)—

31 (1) in the same manner as if the credit against royalties had been paid in money as
32 royalties and distributed under section 35(a) of the Mineral Leasing Act (30 U.S.C.
33 193(a)); and

34 (2) from amounts received as royalties, rentals, or bonuses derived from leases
35 issued under this Act that otherwise would be deposited as miscellaneous receipts under
36 section 35(a) of the Mineral Leasing Act (30 U.S.C. 193(a)).

37 **SEC. 247. DENIAL OF USE AS PRECEDENT.**

38 Nothing in this Act shall be applicable to any lease under the Mineral Leasing Act or the
39 Mineral Leasing Act for Acquired Lands for any mineral, or shall be applicable to, or supersede
40 any statutory or common law otherwise applicable in, any proceeding in any Federal or State
41 court involving development of any mineral outside of any common area and within or outside
42 of the Powder River Basin.

43 **SEC. 248. REGULATIONS.**

44 The Secretary shall promulgate any regulations necessary to implement this Act by not
45 later than 120 days after the date of enactment of this Act.